

CHAPTER 3

SENIOR OFFICERS LEGAL ORIENTATION

OFFICER SEPARATIONS

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OUTLINE OF INSTRUCTION

I. REFERENCES.

- A. Title 10, United States Code.
- B. DOD Instruction 1332.29, Eligibility of Regular and Reserve Personnel for Separation Pay.
- C. DOD Directive 1332.30, Separation of Regular and Reserve Commissioned Officers.
- D. DOD Instruction 1332.40, Separation Procedures for Regular and Reserve Commissioned Officers.
- E. AR 15-80, Army Grade Determination Review Board.
- F. AR 600-8-24, Officer Transfers and Discharges.
- G. AR 600-8-29, Officer Promotions.

II. OVERVIEW OF PURPOSE, KEY CONCEPTS, AND TERMS.

- A. Purposes for Officer Transfers and Discharges.
 - 1. Provide a way to terminate service prior to the terms of the original contract.
 - 2. Provide authority to transfer officers from one component to another.
 - 3. Provide authority to discharge officers from all military obligations.

4. Support the service's personnel life-cycle function of transition.
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- B. Privilege of Service. "An individual is *permitted* to serve as a commissioned officer in the Military Services because of the special trust and confidence the President and the United States have placed in his or her patriotism, valor, fidelity, and competence." DODD 1332.30, para 4.1 (emphasis added).
 - C. Active Duty List vs. Reserve Active Duty List.
 1. A single list for the Army, Air Force, Navy or the Marine Corps that contains the names of all officers (other than those outlined in 10 U.S.C. § 641) who are serving on active duty.
 2. A single list which contains the names of all officers (including commissioned warrant officers) who are in an active status in a Reserve Component and are not on the Active Duty List.
 - D. Probationary vs. Nonprobationary Commissioned Officers. Commissioned officers on the Active Duty List who have less than five years of active commissioned service and Reserve commissioned officers who have less than five years of commissioned service.
 - E. Separation. Broadly defined to include any actions designed to result in a commissioned officer's discharge, retirement, or resignation. Does not include actions designed to result in a Release From Active Duty, which affects a transfer between service components.
 - F. Regular Officer v. Other Than Regular Army (OTRA).
 - G. Show-Cause Authority. Specifically determined by the Secretary of the Military Service concerned. Includes:
 1. The Secretary of the Department or officers (not below the grade of major general or rear admiral (upper half)) designated by the Secretary to determine, based upon a record review, that an officer should show cause for retention.

2. Commanders or reserve personnel centers, commanders exercising general court-martial authority and all general or flag officers in command who have a judge advocate or legal advisor available.

III. OFFICER TRANSFERS AND DISCHARGES.

AR 600-8-24 divides officer transfers and discharges into six areas:

- A. Voluntary Release From Active Duty (REFRAD) - Chapter 2, paras 2-5 through 2-20. Applies to OTRA officers only. A REFRAD is the transfer of an OTRA officer from Active Duty status rather than discharge.
- B. Involuntary REFRAD - Chapter 2, paras 2-21 through 2-42. Applies to OTRA officers only.
- C. Resignations - Chapter 3.
- D. Eliminations - Chapter 4.
- E. Miscellaneous Types of Separations - Chapter 5.
- F. Retirements - Chapter 6.

IV. VOLUNTARY RELEASE FROM ACTIVE DUTY (REFRAD).

- A. REFRADs are service specific separation actions designed to terminate a reserve component officer's active duty obligation or agreement, which do not generally terminate the officer's status or commission. A REFRAD is commonly viewed as a transfer of a reserve component commissioned officer from the active component back to the reserve component. (See 10 U.S.C. §§ 12311-12313.)
- B. Examples of Voluntary REFRAD include: Expiration of obligated service; hardship; pregnancy; separation to attend college; conscientious objection; and separation to accept public office.

1. Personal Reasons. OTRA officers may submit applications no earlier than 12 months and no later than 6 months prior to the desired release date. UP AR 600-8-24, paras 2-5 and 2-6, the officer must:
 - a. Complete at least one year of current AD commitment;
 - b. Complete current prescribed tour if stationed OCONUS;
 - c. Complete Active Duty Service Obligation (ADSO) unless granted an exception to policy.
2. Hardship. Exists when in circumstances not involving death or disability of a member of the soldier's (or spouse's) immediate family, separation will materially affect the care or support of the family by alleviating undue and genuine hardship. UP AR 600-8-24, paras 2-9 and 2-10, the officer must clearly establish one of the following:
 - (1) The hardship is permanent and did not exist prior to entry on Active Duty; or
 - (2) If the hardship existed prior to entry on Active Duty, the condition has since intensified and can only be alleviated by separating from Active Duty; and,
 - (3) Upon REFRAD, the officer will be able to eliminate or materially alleviate the condition.
3. Pregnancy. A commander with Separation Approval Authority (SAA) may release a RC officer who requests REFRAD because of pregnancy. UP AR 600-8-24, paras 2-13 and 2-14:
 - a. The officer's immediate commander will counsel the officer to provide information concerning the officer's rights, entitlements, and responsibilities with respect to continued Active Duty or separation.

- b. Officers commissioned through funded programs will not be released until completion of their Active Duty Service Obligation (ADSO). When extenuating circumstances exist, officers may request a hardship separation.
 - c. If before the REFRAD is accomplished a medical officer determines that the pregnancy has terminated for any reason, the authority for separation no longer exists.
 - 4. School. An officer who is serving the initial tour of Active Duty and who is not mission essential may request REFRAD to attend a recognized institution of higher learning. UP AR 600-8-24, paras 2-15 and 2-16:
 - a. Officers commissioned through funded programs will not be released until completion of their service obligations.
 - b. Officer's school reporting date must be in the last three months of the officer's remaining active service.
- C. Approval Authority varies with type of REFRAD. GOSCA may generally approve voluntary REFRADs but has not authority to disapprove a voluntary request. Recommendations are forwarded to HQDA for action.

V. INVOLUNTARY RELEASE FROM ACTIVE DUTY (REFRAD).

Involuntary REFRADs may be divided into two groups: actions based upon the soldier's status and actions based upon the soldier's conduct.

- A. Status based involuntary REFRADs include: REFRAD for declining integration into the Regular Army; REFRAD for reaching maximum age or service; and REFRAD based upon nonselection for VI or AGR continuation or promotion.
- B. Conduct based involuntary REFRADs include: board directed actions for poor performance or misconduct; REFRAD for civil conviction; and REFRAD for OBC failure.

1. Declination of RA Integration. An OTRA officer who was selected for but declined RA integration will be released from Active Duty. UP AR 600-8-24, paras 2-21 and 2-22:
 - a. Applies to officers who entered Active Duty after enactment of the Defense Officer Personnel Management Act (DOPMA); i.e., on or after 15 September 1981.
 - b. Officers will be released only after all service obligations have been fulfilled.
 - c. Otherwise, release is effective not later than 90 days after the officer signs the declination statement.
2. Maximum Age or Service. (*See* AR 600-8-24, paras 2-23 through 2-26.)
 - a. Age. An officer will be released from AD (unless he or she requests voluntary retirement) on the last day of the month in which he or she attains the following maximum age:
 - (1) For major general or brigadier general promotable – 62.
 - (2) For any other commissioned officer – 60. (If the officer is within 2 years of active federal service retirement eligibility, he or she may be retained on Active Duty until eligible for retirement.)
 - (3) For warrant officers without commission – 62.
 - (4) For reserve commissioned warrants – 60.
 - (5) For certain medical officers – 68. (However, the service may not retain the officer to this age without consent).
 - b. Service. Generally, Reserve commissioned officers will be released from Active Duty after completing 20 years of active Federal service. There are several exceptions:

- (1) Staff College Level School or Senior Service College members will be retained on Active Duty until completing 2 years of Active Duty following graduation.
 - (2) Officers named by command selection boards will be retained on Active Duty up to 90 calendar days after completing assignment to the designated command position.
 - (3) Lieutenant Colonels may be retained until 28 years service.
 - (4) Colonels may be retained until they have 5 years in grade or reach 30 years service, whichever is later.
 - (5) Brigadier Generals may be retained until they have 5 years in grade or reach 30 years service, whichever is later
 - (6) Major Generals may be retained until they have 5 years in grade or reach 35 years service, whichever is later
3. Nonselect for Voluntary Indefinite (VI) or Active Guard or Reserve (AGR) Continuation. (*See* AR 600-8-24, paras 2-27 and 2-28.) RC officers nonselected for VI status will be released not later than the date established by the Secretary or on completion of his or her ADSO, whichever is earlier.
4. REFRAD by the Department of the Army Active Duty Board (DAADB). (*See* AR 600-8-24, paras 2-31 and 2-32.)
 - a. IAW 10 U.S.C. § 14902, Service Secretaries shall prescribe, by regulation, procedures for the review at any time of the record of any Reserve officer to determine whether that officer should be required, because of substandard performance, misconduct, moral or professional dereliction, or national security concerns, to show cause for retention in an active status.

- b. The DAADB is the Army's tool for ensuring that only RC officers who consistently maintain high standards of efficiency, morality, performance, and professionalism are permitted to serve on AD.
 - (1) Referral of a case to the DAADB may be initiated locally or at department headquarters level.
 - (2) Bases for REFRAD are similar to bases for administrative elimination: substandard performance, misconduct, moral or professional dereliction, and national security reasons.
 - (3) These cases involve minimal due process. The officer is notified and given an opportunity to respond/rebut. The board reviews the record and officer's response/rebuttal and then recommends either retention or release.
 - (4) The initiating commander can close the case and stop the REFRAD action upon considering the officer's response/rebuttal.
- c. Civil Conviction. An officer found convicted of a criminal offense or who enters a plea of no contest to a criminal offense in any federal or state court may be released from AD.
 - (1) UP AR 600-8-24, paras 2-33 and 2-34, the command may immediately REFRAD an officer when the offense:
 - (a) Is one punishable by a maximum penalty of death or confinement for more than 1 year under the UCMJ. When the offense is not listed or is not closely related to an offense listed in the UCMJ, the maximum punishment authorized by the United States Code or the District of Columbia Code, whichever is less, applies.
 - (b) Involves moral turpitude, regardless of the sentence received or maximum punishment permissible under any code.

- (2) These cases involve minimal due process. The officer's case is not referred to a board; the officer is only notified and allowed an opportunity to respond.
- 5. Officer Basic Course (OBC) Failure. RC officers with less than three years commissioned service will be released from AD and discharged from his or her Reserve commission when the officer fails to meet service school standards.
 - a. UP AR 600-8-24, paras 2-37 and 2-38, release and discharge may be based upon:
 - (1) Misconduct;
 - (2) Moral or professional dereliction;
 - (3) Academic or leadership deficiencies; or,
 - (4) Resignation from the course.
 - b. Enhanced due process is warranted since action can involve more than a loss of AD status. Officers are entitled to a faculty board because they may also lose their commission. However, officers may waive the board and accept the decision of the approval authority with respect to their release/discharge.
- C. The SAA for involuntary REFRAD actions is generally reserved to the Cdr, HRC, or HQDA level. In any involuntary REFRAD case, reviewing JAs must consult AR 600-8-24.

VI. RESIGNATIONS.

- A. Unqualified.
 - 1. Any officer on AD for more than 90 calendar days may tender an unqualified resignation, unless:

- a. Action is pending that could result in Resignation for the Good of the Service;
 - b. The officer is under a suspension of favorable action;
 - c. The officer is pending investigation;
 - d. The officer is under charges; or
 - e. Any other unfavorable or derogatory action is pending.
 2. Normally, resignations will not be accepted unless, on the requested date of separation, the officer has completed his or her applicable ADSO.
 3. Once submitted, a resignation may be withdrawn with HQDA approval.
- B. Failure to Meet Medical Standards at Appointment. A probationary officer who did not meet medical fitness standards when accepted for appointment may submit a resignation UP AR 600-8-24, paras 3-9 and 3-10.
- C. Pregnancy. (*See* AR 600-8-24, paras 3-11 and 3-12.)
1. Counseling required. Purpose is to provide information concerning rights, entitlements, and responsibilities with respect to continued AD or separation.
 2. Normally, the Army will not grant a tendered resignation for pregnancy until the officer has completed her initial ADSO or any service obligation incurred from the funded program, if any, under which she was commissioned. However, when extenuating circumstances exist, the Army may grant an exception to policy if the officer accepts an indefinite appointment in the Reserves in order to complete the ADSO.
- D. Good of the Service (In Lieu of General Court-Martial).

1. Officers who resign for the good of the service normally receive an Under Other Than Honorable Conditions characterization of service. Regardless of the characterization of service received, an officer who resigns for the good of the service in lieu of general court-martial is barred (with minor exceptions) from receiving Veteran's Affairs benefits.
2. In Lieu of General Court-Martial. (*See* AR 600-8-24, paras 3-13 and 3-14.)
 - a. An officer may submit a resignation for the good of the service in lieu of general court-martial when:
 - (1) Court-martial charges have been preferred against the officer with a view toward trial by general court-martial, or
 - (2) The officer is under a suspended sentence of dismissal.
 - b. Tender of the resignation does not preclude or suspend court-martial proceedings. However, the convening authority may not take action on findings and sentence until DA acts on the resignation request.
- E. Good of the Service (Homosexual Conduct). (*See* AR 600-8-24, paras 3-15 and 3-16.)
 1. Officers can tender resignations for the good of the service due to homosexual conduct prior to the preferral of general court-martial charges or the initiation of administrative elimination proceedings.
 2. The submission of a resignation for the good of the service does not preclude or suspend command initiated disciplinary actions.

VII. INVOLUNTARY DISCHARGES / ELIMINATIONS.

- A. Bases for Elimination or Discharge:

1. Substandard Performance (10 U.S.C. § 1181(a) and DOD Directive 1332.30. Examples:
 - a. Failure to keep pace with contemporaries.
 - b. Apathy, defective attitudes.
 - c. Failure of a course at a service school for academic reasons.
 - d. PT or weight failure.
2. Misconduct, Moral or Professional Dereliction, or in the Interests of National Security (10 U.S.C. § 1181(b) and DOD Directive 1332.30. Examples:
 - a. Serious or recurring wrongdoing, punishable by military or civilian authorities.
 - b. Intentional or discreditable mismanagement of personal affairs.
 - c. Intentional neglect or failure to perform assigned duties or complete required training.
 - d. Drug dependent or misconduct involving drugs.
 - e. Loss of professional qualifications.
 - f. Intentional misrepresentation of facts in obtaining an appointment or in official statements or records.
3. Homosexual Conduct (10 U.S.C. § 654 and DOD Directive 1332.30) is grounds for separation from the military services. Homosexual conduct includes: Homosexual acts; homosexual statements; or homosexual marriage.

4. Derogatory Information. UP AR 600-8-24, para 4-2c, the Army's receipt of or filing of unfavorable information relating to an officer may result in the initiation of an elimination action.
 - a. Required record review is triggered by:
 - (1) Punishment under Article 15, UCMJ;
 - (2) Conviction by court-martial;
 - (3) Denial of security clearance;
 - (4) Relief for cause OER;
 - (5) OMPF-filed administrative reprimand; or,
 - (6) Failure of a course at a service school.
 - b. In considering whether to terminate his or her appointment, the Army must review the officer's overall record.
5. Multiple Bases. Officers may be considered for separation for one or more reasons, however, separate findings are required for each.

B. Procedural Issues (10 U.S.C. § 1185):

1. Initiated by Military Department or a Show Cause Authority (SCA). After reviewing "all information presented about the case," the SCA or GOSCA shall either close the case in which an officer should not be required to show cause for retention or "report the matter for referral to a Board of Inquiry."
 - a. Grounds for separation may be combined.
 - b. There are several limits on show cause actions. (10 U.S.C. § 1161.)

- (1) In substandard performance cases:
 - (a) If an officer showing cause for poor duty performance is retained, she cannot again be required to show cause for the same reasons within a one year period; and,
 - (b) The officer is entitled to honorable discharge if the **sole** reason for elimination is substandard performance.
- (2) In homosexual conduct and misconduct cases in which the officer is retained, the officer may again be required to show cause for retention; however, the second show cause action may not be based solely upon the conduct of the previous board unless the findings and recommendation of the Board are determined to have been the result of fraud or collusion.

2. Notification by SCA.

- a. The initiating authority must provide the officer with a “show cause” notice that identifies the reason(s) for elimination.
 - (1) Bases for elimination may be combined.
 - (2) If combined, separate findings are required for each separation basis identified.
- b. Notice to show cause must also outline the officer’s option to:
 - (1) Submit a resignation in Lieu of Elimination;
 - (2) Request Discharge from the RA IAW 10 U.S.C. § 1186;
 - (3) Submit a request for Retirement in Lieu of Elimination, if eligible, IAW 10 U.S.C. § 1186.

- c. Without regard to the officer's probationary or nonprobationary status, he or she is entitled to submit a written response or rebuttal to the headquarters that initiated the show cause action. At any point of the process, the decision to retain the officer stops the show cause action.
- 3. Officer is provided an opportunity to provide a rebuttal to SCA initiating action.
- 4. The characterization of service for officers facing show cause actions may be Honorable, General, or Under Other Than Honorable Conditions.
 - a. The characterization is normally based on a pattern of behavior and duty performance rather than an isolated incident.
 - b. If the **sole** reason for elimination is substandard performance, the officer is entitled to an Honorable discharge.
- 5. Decision to retain at any point stops action.
- 6. Probationary officers are generally afforded less due process.
 - a. Probationary officer not entitled to board unless OTH discharge is recommended. *See, Air Force Instruction 36-3206, Administrative Discharge Procedures for Commissioned Officers (Deleting previous requirement for Probationary Officer Discharge Board).*
 - b. If officer loses probationary status during processing, must process as nonprobationary.
- 7. Nonprobationary officers must be afforded an opportunity to show cause for retention. (10 U.S.C. § 14904.)
 - a. The officer is first provided with both formal notice to show cause and an opportunity to submit rebuttal matters to the initiating authority. The decision to retain the officer stops the show cause action.

- b. The officer is referred to a Board of Inquiry (BOI). If the BOI recommends the officer's retention, the action is terminated. In all other cases, the case is referred to HQDA.
 - c. HQDA next appoints a Board of Review (BOR) to review the BOI proceedings. If the BOR recommends the officer's retention, the action is terminated. In all other cases, the case is referred to the Secretary of the Army.
 - d. The Secretary of the Army takes action in the officer's case.
- 8. Referral to Board of Inquiry (BOI) - full due process. (10 U.S.C. §§ 1182 and 14903.)
 - a. Composition. (10 U.S.C. § 14906; DODD 1332.40, paras E4.1 and E4.2.)
 - (1) Previously limited to officers in the grade of O-6. Recent statutory changes permit the military departments to use officers in the grade of O-5 for two of the three membership positions.
 - (2) A reserve component member must serve on any board composed to review a reserve component officer. Additionally, if the respondent is an OTRA officer, a reserve component member must serve on the board. Importantly, when the officer is a female, minority, or member of a special branch, the board membership will, upon the officer's request, include a female, minority, or special branch member.
 - b. Function. The BOI "shall give a fair and impartial hearing to a respondent. . . The hearing shall provide a forum for why the officer concerned thinks the contemplated action should not be taken." (DODD 1332.40, para E3.3.3.)
 - c. Respondents afforded substantial due process. At the Board of Inquiry, the officer:

- (1) Will be provided with a military counsel and may hire civilian representation;
- (2) Will have a reasonable time to prepare his case, but in no case will he or she have less than 30 days;
- (3) Will be permitted to be present at all stages of the proceedings, and have full access to all of the records, except when the Secretary determines that national security requires the protection of classified documents;
- (4) May challenge any member of the Board for cause;
- (5) May present documents from his service record, letters, depositions, sworn or unsworn statements, affidavits, evidence, and may require the production of witnesses deemed to be reasonably available;
- (6) May cross examine any witness brought before the board; and
- (7) May elect to testify or may remain silent. If the officer testifies, he or she may be required to submit to examination by the board as to any matter concerning the testimony, but not in contravention of the UCMJ, Article 31. (*See* AR 600-8-24, para 4-11.)

d. Determinations.

- (1) If a BOI determines that the respondent's retention is warranted, the case is closed.
- (2) If a BOI determines that the respondent's retention is not warranted, the case is "reported" to a Board of Review.

9. Board of Review (10 U.S.C. § 1183) - limited due process. The BOR shall review the record of the BOI. If the respondent established that retention is warranted, the case is closed. If the documentation establishes that retention is not warranted, the BOR recommends separation action and the appropriate characterization for the respondent's discharge certificate.
10. Action by Service Secretary (10 U.S.C. § 1184). The Secretary has two choices: retention or separation. The Secretary's decision is final.
11. Processing an Option Elected by Officer.
 - a. Resignation in Lieu of Elimination (Regulatory).
 - b. Request for Discharge (RA) (10 U.S.C. § 1186).
 - c. Retirement in Lieu of Elimination (10 U.S.C. § 1186).

VIII. MISCELLANEOUS SEPARATIONS.

- A. AR 600-8-24, Chapter 5, prescribes disposition and procedures for miscellaneous types of separations whereby an officer may be dismissed, released, separated and discharged from AD. These include:
 1. Lack of jurisdiction – or cases in which the officer obtains a court writ ordering release from Active Duty;
 2. Chaplain's loss of professional qualifications - if the command did not initiate elimination action under Chapter 4, para 4-2b;
 3. Officers twice nonselected for promotion by an HQDA centralized board - unless selectively continued (SELCON), the officer has more than 18 years of service, or is retirement eligible;
 4. Second Lieutenant and Warrant Officer (WO1) nonselected for field promotion;

5. Conviction by foreign tribunal – in cases when sentence includes confinement of greater than 6 months;
 6. Dropped From the Rolls (DFR) – AD or retired when confined, absent without leave (AWOL), or loses retired pay; and
 7. Dismissed by General Court-Martial – after appellate review is complete.
- B. Procedures. The steps necessary to separate officers vary with the type of separation. In all Chapter 5 cases, the command must follow the regulatory separation steps outlined in the regulation.

IX. RETIREMENT.

1. Voluntary Retirements.
 - a. Voluntary Retirement (VR) – General Court-Martial Convening Authority (GCMCA) approval. The Army is the only service to include voluntary retirements in its officer separation regulation. This area, however, is primarily governed by statute.
 - (1) Temporary Early Retirement Authority (TERA). TERA is limited to physical disability cases. This drawdown program was authorized in the FY 2002 National Defense Authorization Act, however, Congress did not fund the program, which expired on 31 December 2002.
 - (2) Voluntary Early Retirement. (*See* 106 Stat 2315.) Another temporary drawdown program, that expired on 31 December 2002, which authorized retired pay for selected soldiers with between 15-20 years of service.
 - (a) Service Secretary determines who is eligible.
 - (b) Retired pay reduced 1% for each year less than 20.

- b. VR in Lieu of Mandatory - i.e., pending REFRAD, elimination, or nonselection.
- c. Retirement in lieu of elimination, in cases involving misconduct or moral or professional dereliction, **requires** referral to Army Grade Determination Board.
- d. Retirement in Lieu of PCS - at least 19 years, 6 months time in service; must submit within 30 days of notice of PCS.

2. Involuntary Retirements.

- a. Mandatory Retirement - maximum age or service.
- b. Selective Early Retirement - based on selection by SERB.
 - (1) 10 U.S.C. § 638 provides authority for the Secretary of the Army to convene boards to select officers for retirement before their mandatory retirement date. (*See* AR 600-8-24, para 6-30.) Board may select no more than 30% of the officers in the following categories:
 - (a) COL with four (4) years TIG;
 - (b) LTC twice nonselected for promotion to COL; and,
 - (c) Drawdown officers below COL who are not promotable and retirement eligible or within two (2) years of eligibility.
 - (2) 10 U.S.C. § 638a modifies SERB eligibility rules during an authorized drawdown. In a drawdown, the categories include:
 - (a) COL with two (2) years TIG;

- (b) LTC **once** nonselected for promotion to COL;
and
- (c) Drawdown officers below COL who are not promotable and retirement eligible or within two (2) years of eligibility.

B. Retired Grade (10 U.S.C. § 1370).

1. Minimum Time in Grade Requirements (Voluntary Retirements).
 - a. Six months for MAJ and below.
 - b. Three years for LTC through major general (MG). The President may waive this requirement in individual cases involving extreme hardship or exceptional or unusual circumstances.
 - c. Under previous drawdown authority, the Secretary of the Army could reduce the TIG requirement to 2 years for LTC and COL.
2. Secretary of the Army makes satisfactory grade determination.
3. Special Appointment to Grades O-9 and O-10.

C. Retired Pay (10 U.S.C. § 1401-1412).

1. Member before 8 September 1980. (“Multiplier” x number of years x high month’s pay.)
2. Member after 7 September 1980. (“Multiplier” x number of years x average monthly base pay for member’s high three years.)
3. Determining the retired pay “multiplier.” (10 U.S.C. § 1409)
 - a. Member before 1 August 1986 – “multiplier” equals 2 ½ percent per year.

- b. Member after 31 July 1986 – “multiplier” equals 2½ percent per year minus 1 percent for each year of service less than 30. For a twenty-year retirement, officer will receive 40%. **NOTE:** As a result of the FY 2000 Defense Authorization Act, members who entered the service after July 31, 1986, will be given a choice of retirement plans at their 15th year of service. There are two options:
 - (1) Take the pre-1986 retirement system (High-Three Year Average System) or
 - (2) Elect the post-1986 retirement system (Military Retirement Reform Act (MRRA) of 1986, commonly referred to as REDUX) and take a \$30,000 career retention bonus.

X. FINANCIAL CONSIDERATIONS.

- A. Separation Pay for Involuntary Separations (DOD Instruction 1332.29, part 3).
 - 1. Basic eligibility requirements: Six years active duty; honorable service; involuntary separation; and a written agreement to serve in Ready Reserve for at least 3 years.
 - 2. Full Separation Pay.
 - a. Officers who are involuntarily separated for the following reasons may receive full separation pay.
 - (1) Fully qualified but denied continuation on AD.
 - (2) Fully qualified but being separated under reduction in force (RIF).
 - b. Computation.
 - (1) \$30,000 ceiling eliminated.

(2) Formula: 10% of annual base pay times the number of years service.

(3) Example. CPT with 8 years service. $(.10 \times (12 \times \$3,703.00 \text{ (monthly base pay)})) \times 8 \text{ (years in service)} = \$35,548.80$

3. Half Separation Pay. Officers who are involuntarily separated for cause **may** receive half separation pay.

a. Homosexuality.

b. Drug or alcohol abuse rehabilitation failure.

c. For the convenience of the government.

d. Security.

4. Officers involuntarily separated due to substandard performance or misconduct do not receive separation pay.

B. Special Separation Benefit (SSB) (10 U.S.C. § 1174a) and Voluntary Separation Incentive (VSI) (10 U.S.C. § 1175).

1. Special Separation Benefit (SSB) and Voluntary Separation Incentive (VSI). [NOTE: The DOD's temporary drawdown program was not renewed by the National Defense Appropriations Act for FY 2002 and therefore terminated on 31 December 2002. These programs may be resurrected, subject to the availability of future appropriations and the need to reduce Army size.]

a. Special Separation Benefit (SSB). (*See* 10 U.S.C. § 1174a.)

(1) Provided for a one-time lump sum payment.

(2) Formula: 15% of annual base pay times the number of years service.

- (3) Example: CPT X has eight (8) years of service. CPT X's pre-tax payment would be $(.15 \times (12 \times \$4,273.50 \text{ (last month base pay)}) \times 8 \text{ (years in service)})$ or \$61,538.40.
- b. Voluntary Separation Incentive (VSI). (*See* 10 U.S.C. § 1175.)
- (1) Provided for annual payments for twice the number of years of active duty.
 - (2) Formula: 2.5% of annual base pay times the number of years service paid annually for twice the number of years in service.
 - (3) Example: CPT Y has eight (8) years of service. During the next 16 years, he will receive \$164,102.40 paid at an annual pre-tax rate of \$10,256.40. Each of the 16 installments would be $(.025 \times (12 \times \$4,273.50 \text{ (last month's base pay)})) \times 8 \text{ (years in service)}$ or \$10,256.40.
- c. Eligibility Rules for SSB and VSI. To collect benefits, an officer must:
- (1) Be a RA or RC officer on the ADL;
 - (2) Have between six (6) and 20 years of service;
 - (3) Have five years of continuous AD or full time Guard duty immediately preceding the date of separation;
 - (4) Not be eligible for retired pay;
 - (5) Execute an agreement to serve in the Reserves; and,
 - (6) Meet other requirements established by the Secretary.
- d. Other Limitations on SSB and VSI.

- (1) Acceptance of DOD civilian position within 180 days results in loss of SSB or VSI.
- (2) Disability/retired pay set-off. SSB/VSI recipients were permitted to later convert to the early retirement program. Retirement pay would then have been set-off by amounts received under SSB/VSI. (*See* 10 U.S.C. § 1174 (h).)
- (3) Subject to the availability of appropriations.

C. Recoupment (10 U.S.C. § 2005).

1. Policy. Individuals who participate in certain advanced education programs and fail to complete their educational requirements or military service obligations are subject to recoupment.
2. Procedures.
 - a. Defense Finance and Accounting Service (DFAS) procedure initiated by the officer's local commander.
 - b. Recoupment must be accomplished prior to separation.

XI. OTHER CONSIDERATIONS.

A. Selective Continuation on Active Duty (SELCON). (*See* 10 U.S.C. § 637.)

1. Applies to RA **and** OTRA officers. The Secretary may (based on the needs of the service for specific skills) convene selective continuation boards to retain twice nonselected officers who wish to remain on active duty. CPTs may be retained until 20 years time in service (TIS); MAJs until 24 years TIS, unless thereafter promoted AZ.
2. NDAA for FY 2002, section 505(d), extended SELCON to OTRA officers.

- a. MAJs with less than 14 years TIS are not required to be SELCONed until 20 years. SELCON increments of three years.
 - b. MAJs with more than 14 years TIS will normally be SELCONed until 20 years. Officers who refuse to accept SELCON through retirement eligibility are not authorized to receive Separation Pay.
 - c. Non-SELCONed officers will be separated within seven months.
- B. Involuntary Separation of Officers with Access to Sensitive Programs. AR 600-8-24, para 1-18.
 - 1. Coordination with supporting security officials required. Separation will not occur unless the security official concurs with the action.
 - 2. Applies to officers in the following categories:
 - a. Knowledge of sensitive compartmented information (SCI).
 - b. Nuclear Weapon Personnel Reliability Program assignment.
 - c. Knowledge of Single Integrated Operational Plan—Extremely Sensitive Information (SIOP-ESI).
 - d. Special Access Program (SAP) knowledge.
 - e. Presidential Support assignment.
- C. Separation in a Foreign Country. AR 600-8-24, para 1-28.
 - 1. Normally, officers are not separated in OCONUS (Outside the Continental United States) commands. They are returned to the United States and processed for final separation at CONUS-based separation/transfer points.

2. Exceptions.

- a. Officer requests separation in a foreign country and the government concerned consents.
 - (1) The officer must obtain all necessary documents for his or her lawful presence in the foreign country prior to separation.
 - (2) The officer's major command (MACOM) may disapprove the request for overseas separation.
- b. Officers confined in a foreign penal institution pursuant to the sentence of a foreign court.
 - (1) DA must approve separation during confinement.
 - (2) Foreign authorities must take final action on the case before separation.
 - (3) The foreign government concerned must consent to the officer's separation in its territory.

D. Referral for Physical Disability Evaluation. AR 600-8-24, para 1-23.

- 1. Triggered when it is determined that an officer being processed for REFRAD, separation, retirement, or elimination has a medical impairment that does not meet medical retention standards.
- 2. Officers under investigation for an offense chargeable under the Uniform Code of Military Justice (UCMJ) that could result in dismissal or punitive discharge may not be referred for, or continue, disability processing unless –
 - a. The investigation ends without charges.

- b. The commander exercising court-martial jurisdiction dismisses charges.
 - c. The commander exercising court-martial jurisdiction refers the charge(s) for trial to a court-martial that cannot adjudge a dismissal or punitive discharge.
- 3. Officers pending certain involuntary REFRADs or involuntary elimination under chapter 4, AR 600-8-24, or who request resignation for the good of the service or separation, resignation or retirement in lieu of elimination, will be processed under both AR 600-8-24 and the medical/physical evaluation board system.
 - a. If the physical disability evaluation results in a finding of physical fitness, the Army Physical Disability Agency will approve the findings for the Secretary of the Army and forward them for processing with the AR 600-8-24 action.
 - b. If the physical disability evaluation results in a finding of physical unfitness, both actions will be forwarded to the Secretary of the Army for determination of appropriate disposition.
- 4. When an officer is processed for separation or retirement for reasons other than those indicated above, physical disability processing takes precedence.

XII. COMMANDER'S RESPONSIBILITIES.

- A. Ensuring proper documentation.
- B. Ensure counseling requirements of AR 600-8-24, para 1-12, properly completed in all REFRAD cases.
 - 1. Required for commissioned officers with less than 10 years active federal commissioned service.

2. Triggered when such officers submit a request for voluntary REFRAD or an unqualified resignation.
 3. Counseling is by the first colonel in the officer's chain of command or supervision. Chaplains, judge advocates, and medical officers will be counseled by a senior officer of their branch in the chain of technical supervision or as specifically designated by their branch.
 4. Counseling must include the following:
 - a. Advice concerning the opportunities available in the military.
 - b. A discussion of the officer's previously achieved investment in the Army.
 - c. A determination as to whether the officer has satisfied all applicable service obligations.
 - d. A determination that the officer is not under investigation or charges, awaiting the results of trial, or being considered for administrative elimination.
 - e. A determination that the officer is not AWOL, in the confinement of civil authorities, suffering from a severe mental disease or defect, or in default in respect to public property or public funds.
 - f. Advice encouraging a RA officer to accept an appointment in the U.S. Army Reserve. RC officers will be encouraged to retain their commissioned status in the U.S. Army Reserve.
 - g. The addresses of agencies that can provide the officer with information about U.S. Army Reserve career opportunities. See Table 1-1.
- C. Take the Proper Action. In determining what action to take when faced with officer misconduct or poor performance, the commander should decide:
1. Should the officer be retained on active duty?

2. Should the officer be eligible for reappointment or recall to active duty at some later time?
3. Should the officer lose his or her commission?

XIII. CONCLUSION.

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